

AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 998

Introduced by Assembly Member Chu

February 22, 2005

An act to ~~amend Section 11160 of~~ *add Section 11160.1* to the Penal Code, relating to reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 998, as amended, Chu. Reporting: sexual assaults: medical exams.

Existing law requires health practitioners, as defined, who provide medical services to certain persons to immediately make a report to a local law enforcement agency that contains certain personal and medical information. Those certain persons include persons suffering from an injury inflicted by a firearm, and persons suffering from an injury inflicted as the result of assaultive or abusive conduct.

This bill would require health practitioners to also make a report to a local law enforcement agency upon providing medical services to persons in the custody of law enforcement from whom evidence is sought in connection with the investigation of a sexual assault crime. Because the bill would impose new duties on local agencies, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11160 of the Penal Code is amended to~~
2 ~~read:~~

3 ~~11160. (a) Any health practitioner employed in a health~~
4 ~~facility, clinic, physician's office, local or state public health~~
5 ~~department, or a clinic or other type of facility operated by a~~
6 ~~local or state public health department who, in his or her~~
7 ~~professional capacity or within the scope of his or her~~
8 ~~employment, provides medical services for a physical condition~~
9 ~~to a patient whom he or she knows or reasonably suspects is a~~
10 ~~person described as follows, shall immediately make a report in~~
11 ~~accordance with subdivision (b):~~

12 ~~(1) Any person suffering from any wound or other physical~~
13 ~~injury inflicted by his or her own act or inflicted by another~~
14 ~~where the injury is by means of a firearm.~~

15 ~~(2) Any person suffering from any wound or other physical~~
16 ~~injury inflicted upon the person where the injury is the result of~~
17 ~~assaultive or abusive conduct.~~

18 ~~(3) Any person in the custody of law enforcement from whom~~
19 ~~evidence is sought in connection with the investigation of a~~
20 ~~sexual assault crime.~~

21 ~~(b) Any health practitioner employed in a health facility,~~
22 ~~clinic, physician's office, local or state public health department,~~
23 ~~or a clinic or other type of facility operated by a local or state~~
24 ~~public health department shall make a report regarding persons~~
25 ~~described in subdivision (a) to a local law enforcement agency as~~
26 ~~follows:~~

27 ~~(1) A report by telephone shall be made immediately or as~~
28 ~~soon as practically possible.~~

29 ~~(2) A written report shall be prepared on the standard form~~
30 ~~developed in compliance with paragraph (4) of this subdivision,~~
31 ~~and Section 11160.2, and adopted by the agency or agencies~~
32 ~~designated by the Director of Finance pursuant to Section 13820,~~
33 ~~or on a form developed and adopted by another state agency that~~

1 otherwise fulfills the requirements of the standard form. The
2 completed form shall be sent to a local law enforcement agency
3 within two working days of receiving the information regarding
4 the person.

5 (3) A local law enforcement agency shall be notified and a
6 written report shall be prepared and sent pursuant to paragraphs
7 (1) and (2) even if the person who suffered the wound, other
8 injury, or assaultive or abusive conduct has expired, regardless of
9 whether or not the wound, other injury, or assaultive or abusive
10 conduct was a factor contributing to the death, and even if the
11 evidence of the conduct of the perpetrator of the wound, other
12 injury, or assaultive or abusive conduct was discovered during an
13 autopsy.

14 (4) The report shall include, but shall not be limited to, the
15 following:

16 (A) The name of the injured person, if known.

17 (B) The injured person's whereabouts.

18 (C) The character and extent of the person's injuries.

19 (D) The identity of any person the injured person alleges
20 inflicted the wound, other injury, or assaultive or abusive conduct
21 upon the injured person.

22 (e) For the purposes of this section, "injury" shall not include
23 any psychological or physical condition brought about solely
24 through the voluntary administration of a narcotic or restricted
25 dangerous drug.

26 (d) For the purposes of this section, "assaultive or abusive
27 conduct" shall include any of the following offenses:

28 (1) Murder, in violation of Section 187.

29 (2) Manslaughter, in violation of Section 192 or 192.5.

30 (3) Mayhem, in violation of Section 203.

31 (4) Aggravated mayhem, in violation of Section 205.

32 (5) Torture, in violation of Section 206.

33 (6) Assault with intent to commit mayhem, rape, sodomy, or
34 oral copulation, in violation of Section 220.

35 (7) Administering controlled substances or anesthetic to aid in
36 commission of a felony, in violation of Section 222.

37 (8) Battery, in violation of Section 242.

38 (9) Sexual battery, in violation of Section 243.4.

39 (10) Incest, in violation of Section 285.

~~(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.~~

~~(12) Assault with a stun gun or taser, in violation of Section 244.5.~~

~~(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.~~

~~(14) Rape, in violation of Section 261.~~

~~(15) Spousal rape, in violation of Section 262.~~

~~(16) Procuring any female to have sex with another man, in violation of Section 266, 266a, 266b, or 266c.~~

~~(17) Child abuse or endangerment, in violation of Section 273a or 273d.~~

~~(18) Abuse of spouse or cohabitant, in violation of Section 273.5.~~

~~(19) Sodomy, in violation of Section 286.~~

~~(20) Lewd and lascivious acts with a child, in violation of Section 288.~~

~~(21) Oral copulation, in violation of Section 288a.~~

~~(22) Sexual penetration, in violation of Section 289.~~

~~(23) Elder abuse, in violation of Section 368.~~

~~(24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.~~

~~(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.~~

~~(f) The reporting duties under this section are individual, except as provided in subdivision (e).~~

~~(g) No supervisor or administrator shall impede or inhibit the reporting duties required under this section and no person making a report pursuant to this section shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports~~

~~may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require any employee required to make a report under this article to disclose his or her identity to the employer.~~

~~(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.~~

SECTION 1. Section 11160.1 is added to the Penal Code, to read:

11160.1. (a) Any health practitioner employed in any health facility, clinic, physician's office, local or state public health department, or a clinic or other type of facility operated by a local or state public health department who, in his or her professional capacity or within the scope of his or her employment, performs a forensic medical examination on any person in the custody of law enforcement from whom evidence is sought in connection with the commission and investigation of a crime of sexual assault, as described in subdivision (d) of Section 11160, shall prepare a written report. The report shall be on a standard form developed by, or at the direction of, the Office of Emergency Services or an agency designated by the Director of Finance pursuant to Section 13820, and shall be immediately provided to the law enforcement agency who has custody of the individual examined.

(b) The examination and report is subject to confidentiality requirements of the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code, the physician-patient privilege pursuant to Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, and the privilege of official information pursuant to Article 9 (commencing with Section 1040) of Chapter 4 of Division 8 of the Evidence Code.

(c) The report shall be released upon request, oral or written, to any person or agency involved in any related investigation and prosecution of a criminal case including, but not limited to, a law enforcement officer, district attorney, city attorney, crime laboratory, county licensing agency, and coroner. The report may be released to defense counsel or another third party only through discovery of documents in the possession of a prosecuting agency or following the issuance of a lawful court order authorizing the release of the report.

1 (d) A health practitioner who makes a report in accordance
2 with this section shall not incur civil or criminal liability. No
3 person, agency, or their designee who is required or authorized
4 to report pursuant to this section, who takes photographs of a
5 person suspected of being a person subject to a forensic medical
6 examination as described in this section shall incur any civil or
7 criminal liability for taking the photographs, causing the
8 photographs to be taken, or disseminating the photographs to a
9 law enforcement officer, district attorney, city attorney, crime
10 laboratory, county licensing agency, and coroner with the
11 reports required in accordance with this section. However, this
12 subdivision shall not be deemed to grant immunity from civil or
13 criminal liability with respect to any other use of the
14 photographs.

15 (e) Section 11162 does not apply to this section.

16 SEC. 2. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.